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21	in indexes, inc.	
22	UNITED STATES	DISTRICT COURT
23	CENTRAL DISTRICT OF CAL	IFORNIA, WESTERN DIVISION
24		
25	CORY SPENCER, an individual;	CASE NO. 2:16-cv-02129-SJO (RAOx)
26	DIANA MILENA REED, an individual; and COASTAL	PLAINTIFFS' SUPPLEMENTAL
27	PROTECTION RANGERS, INC., a	ADDITIONAL MATERIAL FACTS IN OPPOSITION TO INDIVIDUAL
28	California non-profit public benefit	DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OR. IN THE
		Case No. 2:16-cv-02129-SJO (RAOx)

PLAINTIFFS' SUPP. ADDITIONAL MATERIAL FACTS IN OPP. TO INDIVIDUAL DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION

## Case 2:16-cv-02129-SJO-RAO Document 493-1 Filed 10/18/17 Page 2 of 35 Page ID #:17557

1	corporation,
2	Plaintiffs,
3	ŕ
4	V.
5	LUNADA BAY BOYS; THE INDIVIDUAL MEMBERS OF THE
6	LUNADA BAY BOYS, including but
7	not limited to SANG LEE, BRANT BLAKEMAN, ALAN JOHNSTON
8	AKA JALIAN JOHNSTON,
9	MICHAEL RAE PAPAYANS, ANGELO FERRARA, FRANK
10	FERRARA, CHARLIE FERRARA,
11	and N. F.; CITY OF PALOS VERDES
12	ESTATES; CHIEF OF POLICE JEFF KEPLEY, in his representative
13	capacity; and DOES 1-10,
14	Defendants.
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# ALTERNATIVE, SUMMARY ADJUDICATION

Complaint Filed: March 29, 2016 Trial Date: March 29, 2016 December 12, 2017

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Plaintiffs Cory Spencer, Diana Milena Reed and Coastal Protection Rangers, Inc. (collectively referred to as "Plaintiffs") hereby submit these Supplemental Additional Material Facts in Opposition to Defendants Sang Lee, Brant Blakeman, Alan Johnston aka Jalian Johnston, Michael Rae Papayans, Angelo Ferrara, Frank Ferrara, and Charlie Ferrara's (hereinafter "Individual Defendants") Motions for Summary Judgment or, in the Alternative, Summary Adjudication before this Court.

**Issue #3:** The Individual Defendants Are Engaged in a Conspiracy to **Exclude Outsiders from Lunada Bay.** 

#### Evidence in Support of Plaintiffs' Additional Material Facts:

89. Over the years, the Bay Boys, including the individual Defendants, have perfected their approach to 16 excluding outsiders. Typically, rather than directly confront an "outsider," the Bay Boys will simply block them from catching any waves while in the water, ensuring that the non-local has such a miserable experience, he/she never returns.

Plaintiffs' Additional Material Facts:

89. Decl. Franklin ISO Pltfs.' Supp. Opp'n to Defs.' Mots. Summ. J. (Decl. Franklin), Ex. 13 (text messages exchanged between Defendant Papayans and a co-conspirator, Brandon Lamers, on 1/22/16: [Lamers to Papayans] "My mom just said undercover cop at the bay"; "And this cop car pulls up and has full on conversation with the undercover guy" (MP 00416); [Lamers to Papayans] "Pathetic we had two kooks out two days ago when I surfed and me and jack just sat right on his ass"; "He didn't catch a single wave" (MP 00416, MP 00415); [Papayans to Lamers] "That's the way to do it bro

1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:
2		Additional Material Lacts.
3		[sic] no reason to confront anybody does
4		not [sic] let him get waves and they never
5		come back" (MP 00415); [Lamers to
6		Papayans] "Exactly that's how it has to be
7		[sic] kooks come out then no fun waves
8		[sic] so simple"; "The guy split so fast"
9		(MP 00415); [Papayans to Lamers]
10		"Haha, they are easy to spot too" (MP
11		00415); [Lamers to Papayans] "Hell yeah
12		just funny as shit" (MP 00414-MP
13		00415); Ex. 20 (text message to Angelo
14		Ferrara from Randy Walton on 1/16/17:
15		"By the way I heard today is one of those
16		'surf the bay days'!!!!! Boogie boarders
17		and everybody!!! There is a little bit is
18		[sic] Surf, there's some swell out there but
19		nothing spectacular but I hope it's packed
20		in those kooks are getting stuffed and
21		burned and that's about it no further than
22		that. You know what I mean!?!!!".) (p.
23		192); <b>Exs. 27 &amp; 28</b> (Defendant Johnston
24		told Sufer Magazine that "outsiders will
25		get nothing except maybe a shitty one or
26		twoso good luck. Wouldn't any
27		normal, self-respecting dude just go check
28		0

		h
1	<b>Plaintiffs' Additional Material Facts:</b>	Evidence in Support of Plaintiffs' Additional Material Facts:
2		
3		elsewhere? Everyone has a local break
4		and to see it disrespected and slutted out
5		everywhere is just plain f-king dumb."").
6	90. Defendants Papayans and Sang	90. Decl. Franklin, Ex. 13 (text
7	Lee conspired with each other and other	messages exchanged between Defendant
8	co-conspirators via cell phone to	Papayans, Sang Lee, and 9 others,
9	coordinate the actions against outsiders	including Charlie Mowat, on 1/29/16:
10	trying to visit or surf at Lunada Bay,	[2724 to Sang Lee, Papayans, Mowat and
11	including Plaintiff Spencer and his	7 others] "The kook is here at the bay
12	companions, on January 29, 2016.	right now" (MP 00348); [Mowat to Sang
13		Lee, Papayans, and 7 others] "On my
14		way!!!!" (MP 00348); [Papayans to Sang
15		Lee, Mowat, and others] "I'm up"; "Tell
16		him to wait please" (MP 00348); [2724 to
17		Papayans, Sang Lee, Mowat and 7 others]
18		"There are two kooks he's got a little
19		baldheaded white guy with them he looks
20		like a boogie board or to fuck [sic] what a
21		joke!" (MP 00347); [Mowat to Papayans,
22		Sang Lee, and 7 others] "Yep. He's here"
23		(MP 00347); [Papayans to Sang Lee,
24		Mowat and 7 others] "Michelle get to the
25		bay and rouste [sic] those kooks" (MP
26		00347); [7571 to Papayans, Sang Lee,
27		Mowat and 7 others] "Lol ok I'm on my
28		0 N 216 02122 CIO (D+2)

1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:
2		Additional Waterial Facts.
3		way ! [sic]" (MP 00347); [Papayans to
4		Mowat, Sang Lee, and 7 others] "Get him
5		charlie, just go shake his hand, tell him we
6		missed him and can't believe he didn't
7		make any of these latest headlines, he
8		should be ashamed" (MP 00346-MP
9		00347); [Mowat to Papayans, Sang Lee,
10		and 7 others] "He's in the water. Only
11		five guys out. Get down here boys. I'm
12		out there" (MP 00346); [1505 to
13		Papayans, Mowat, Sang Lee, and 7 others]
14		"Fuck give me [sic] hell" (MP 00344); see
15		also Ex. 13 (text exchange between
16		Papayans and co-conspirator Brandon
17		Lamers, 1/29/16: [Lamers to Papayans]
18		"Chris Taloa is comming [sic] tomorrow
19		let Benner know and whoever" (MP
20		00360); [Papayans to Lamers] "How did
21		you find this out???" (MP 00360);
22		[Lamers to Papayans] "I'm at a video little
23		party [sic] at van dyne everyone is saying
24		that" (MP 00360); [Papayans to Lamers]
25		"Oh shizzle [sic], he say it on his site"
26		(MP 00360); [Lamers to Papayans]
27		"Everyone's talking about it we have to sit
28		

1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:
2		Additional Material Facts.
3		on this guy" (MP 00359); [Lamers to
4		Papayans] "Don't understand man once
5		again ruin a good day with that crap" (MP
6		00359); [Papayans to Lamers] "We will
7		all be holding it down" (MP 00357);
8		[Papayans to Lamers] "Kooks up there"
9		(MP 00346); [Lamers to Papayans]
10		"Huh"; "Allready [sic] up there" (MP
11		00346); [Papayans to Lamers] "Yup" (MP
12		00346); [Lamers to Papayans] "Fuck";
13		"Anyone there allready"; "Gosh damn";
14		"Are they in the water?"; "I hate this guy"
15		(MP 00345-MP 00346); [Papayans to
16		Lamers] "Yea, only 5 guys out and he's
17		out, I'm going" (MP 00345); [Lamers to
18		Papayans] "Yeah get down there I'll be up
19		as soon as I can my dad should be going
20		out soon" (MP 00345).
21	91. Defendant Lee also coordinated	91. Decl. Franklin, ¶ 25 & Ex. 21 (Def.
22	the actions against Plaintiff Spencer on	Lee T-Mobile records, indicating on
23	January 29, 2016 via cell phone with	1/29/16, Sang Lee called Charlie Mowat
24	Brant Blakeman and co-conspirator	at 6:56 am PST (14:56 UTC) (p. 0271)
25	Charlie Mowat, after receiving texts	and 8:02 am PST (16:02 UTC) (p. 0272),
26	from Mowat, Papayans, Thiel, and	and called Defendant Blakeman (at home)
27	others.	62 times from 1:30 pm PST (21:30 UTC)
28		5 Cosa No. 2:16 av 02120 SIO (PAOv)

1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs!
1	Tamunis Auditional Material Pacis.	Evidence in Support of Plaintiffs' Additional Material Facts:
2		
3		(p. 0273) to 2:03 pm PST (22:03 UTC) (p.
4		0275).
5	92. Defendant Lee coordinated the	92. Decl. Franklin, Ex. 20 (Angelo
6	actions against Plaintiff Spencer on	Ferrara extraction report, 1/29/16 text
7	January 29, 2016 via text message with	from Sang Lee to Angelo Ferrara: "Taloa
8	Angelo Ferrara.	n his buddies r coming up to the bay today
9		n tomorrow to surf Plz everyone take
10		a day off n surf We need many locals
11		out there today as possible God bless
12		Lunada n all her children (us) [sic]" (at p.
13		878).
14	93. Defendants Papayans, Brant	93. Decl. Franklin, Ex. 13 (texts
15	Blakeman, and co-conspirators Michael	exchanged on 2/5/16 between Defendants
16	Thiel and Charlie Mowat coordinated	Papayans, Blakeman, and co-conspirators
17	their harassment of Plaintiff Spencer	Charlie Mowat and Michael Thiel:
18	and his companions on February 5,	[Mowat to Papayans, Blakeman and
19	2016 via text message.	Thiel] "Surf looks like it could get epic
20		today. There's five kooks standing on top
21		of the trail with their own personal
22		photographer taking pictures of them
23		posing. I think it's the same Taloa crew.
24		This could get ugly today. We all need to
25		surf" (MP 00221); [Mowat to Papayans,
26		Blakeman and Thiel] "It's definitely
27		Taloa" (MP 00221); [Papayans to Mowat,
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1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:
2		4 Additional Mattial I acts.
3		Blakeman and Thiel] "Yea it's him, no
4		waves though" (MP 00221); id. [Mowat to
5		Papayans, Blakeman and Thiel] "Too bad
6		this bitch that called the cops on [David
7		Melo] is such a cunt. She sure has a great
8		rack and ass!" (MP 00219); [Thiel to
9		Mowat, Papayans and Blakeman]
10		"Fuckshe's still down there???!" (MP
11		00219); [Mowat to Thiel, Papayans and
12		Blakeman] "No, they are all gone. Ghost
13		town Lunada. Just had an epic sess [sic]
14		with just Sandoval out" (MP 00219);
15		[Thiel to Mowat, Papayans and
16		Blakeman] "Saw u [sic] get a couple good
17		ones! Good crew down now – Leo, Clyde,
18		Gabron, Chad" (MP 00219); [Mowat to
19		Thiel, Papayans and Blakeman] "Yep,
20		business as usual. The patio is in good
21		form" (MP 00219); [Thiel to Mowat,
22		Papayans and Blakeman] "Right on"
23		(MP 00219).)
24	94. Defendants Papayans, Blakeman,	94. Decl. Franklin, Ex. 13 (text
25	and other Bay Boys (including Charlie	messages exchanged on February 5, 2016
26	Mowat and Michael Thiel) coordinated	between Michael Thiel, Brant Blakeman,
27	to pressure the City to remove Chief	Charlie Mowat, and Michael Papayans, as
28		

1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs'
2		Additional Material Facts:
3	Kepley from office, including by	follows: [Thiel to group] "So everybody-
4	scheduling a meeting with and writing	all PVE residents write the mayor, city
5	letters to City Manager Dahlerbruch.	manager and council. Keep it calm and
6		rational, but clearly express your concerns
7		and outrage at the chief's behavior.
8		Remember, we live here! It's our city.
9		CHA" (MP 00225); [Mowat to group]
10		"From Sully Can't find this guys [sic]
11		contact That tony dallenbach [sic] guy
12		is the city commissioner who hired this
13		douche bag" (MP 00225); [Mowat to
14		group] "Tom/everybody- if you go on the
15		PVE website, all addresses are there
16		(Chach sent out screen shots). Send to
17		Mayor, City Manager, and City Council.
18		In this case, residency matters- if you live
19		in PVE, do it and sign your name!" (MP
20		00224); [Papayans to group] "I'm gonna
21		write them for sure, and my mom is going
22		to as well" (MP 00224); [Thiel to group]
23		"Write on!" (MP 00222); [Mowat to
24		group] "Just proof read and sent my letter
25		to the city. Here are the email addresses
26		for them all. I encourage everybody, and I
27		mean EVERYBODY to write a letter
28		0

1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:
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3		expressing their discontent with police
4		chief Kepley's policies. You don't have
5		to be a homeowner or even a resident.
6		Mike Thiel has a meeting scheduled with
7		them on February 11. The more letters
8		sent the better to support our case. Please
9		take a minute and get this done. Our
10		future depends on it" (MP 00212);
11		[Mowat to group on 2/7/16] "Dear Mr.
12		Mowat, Thank you for your email to me
13		and the City Council. It was received by
14		all of us and Im [sic] writing to both
15		acknowledge its receipt and respond. Its
16		[sic] been a long day; sorry for the late
17		response. We all would agree that the
18		press about the local surfing situation is
19		creating un-need [sic] attention about a
20		structure that has existed for a long time;
21		social media has further increased the
22		spread of stories and information. I can
23		assure you that City staff, including the
24		Chief, do not intend any arbitrary
25		action(s) related to the patio, and its
26		removal is not imminent or planned. On
27		the other hand, it is an unauthorized
28		

1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:
2		Tuditional Platform Tudio
3		structure and, as with all unauthorized
4		structures in the Citys [sic] parklands, we
5		consider the options of what, if anything,
6		is necessary to do about it. No decisions
7		have been made and of all the
8		unauthorized structures that exist
9		throughout the City, we are first focusing
10		on those that represent safety concerns
11		and block the publics [sic] access to open
12		spaces. We have attempted to convey this
13		information and perspective to the press.
14		The press reports what they want and
15		splices together information for their
16		report(s). Please also be forewarned, we
17		are aware that the press plans additional
18		articles in the near future that may or may
19		not accurately represent the staffs [sic]
20		position and disposition of the structure
21		while calling more attention to the patio.
22		We also have not had wide-spread reports
23		of vandalism or bullying that the press has
24		implied is a prevalent situation. However,
25		we have received a few complaints about
26		the area being protected by local surfers
27		for the exclusive use of select people. In
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1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:
2		
3		response, the Police Department must
4		assure the publics [sic] safety and public
5		access to the shoreline, as to the shoreline
6		is public space; thus they patrol the area as
7		necessary. While doing so, we are
8		pleased to report that since December,
9		burglaries in the City have sharply
10		declined following intensive work by the
11		Police Department. The Police Chief
12		reports to me and as such, Id [sic] like to
13		invite you to meet and discuss this further.
14		Our meeting will include both the Mayor
15		and the Police Chief so we can together
16		address your concerns and the topics you
17		raise. It is important to talk about them.
18		If you are interested, please let me know
19		your availability; I will coordinate the
20		meeting for all of us. Thank you and we
21		share your frustration with all the reports.
22		I look forward to hearing back from you.
23		Tony" (MP 00188-MP00189).
24		
25	111	
26	111	
27	111	
28	111	~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~
	DI AINTEECCOURD ADDITIONAL MATERIAL EA	-11- Case No. 2:16-cv-02129-SJO (RAOX)

#### **Issue #4:** Public Nuisance

1

2 **Plaintiffs' Additional Material Facts:** 3 4 5 Over the years, the Bay Boys 95. have revised and perfected their 7 strategy of exclusion, aiming to make 8 outsiders' experiences at Lunada Bay so miserable that they won't come 10 back. 11 12 13 14 15 16 17 18 19 20

### Decl. Franklin, Ex. 13 (text 95. messages exchanged between Defendant Papayans and a co-conspirator, Brandon Lamers, on 1/22/16: [Lamers to Papayans] "My mom just said undercover cop at the bay"; "And this cop car pulls up and has full on conversation with the undercover guy" (MP 00416); [Lamers to Papayans] "Pathetic we had two kooks out two days ago when I surfed and me and jack just sat right on his ass"; "He didn't catch a single wave" (MP 00416-MP 00415); [Papayans to Lamers] "That's the way to do it bro [sic] no reason to confront anybody does not [sic] let him get waves and they never come back" (MP 00415); [Lamers to Papayans] "Exactly that's how it has to be [sic] kooks come out then no fun waves [sic] so simple"; "The guy split so fast" (MP 00415); [Papayans to Lamers] "Haha, they are easy to spot too" (MP 00415); [Lamers to Papayans] "Hell yeah

Evidence in Support of Plaintiffs' Additional Material Facts:

-12-

Case No. 2:16-cv-02129-SJO (RAOx)

just funny as shit" (MP 00414-MP

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1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:	
2		Auditional Material Facts.	
3		00415); see also PAMF No. 75 (Dock.	
4		No. 329).	
5	96. The Bay Boys plan their	96. Decl. Franklin, Ex. 13 (text	
6	obstruction of non-locals' free use of	messages exchanged between Defendant	
7	Lunada Bay via cell phone.	Papayans, Sang Lee, and 9 others,	
8		including Charlie Mowat, on 1/29/16:	
9		[2724 to Sang Lee, Papayans, and others]	
10		"The kook is here at the bay right now"	
11		(MP 00348); [Mowat to Sang Lee,	
12		Papayans, and others] "On my way!!!!"	
13		(MP 00348); [Papayans to Sang Lee,	
14		Mowat, and others] "I'm up"; "Tell him to	
15		wait please" (MP 00348); [2724 to	
16		Papayans, Sang Lee, Mowat and others]	
17		"There are two kooks he's got a little	
18		baldheaded white guy with them he looks	
19		like a boogie board or to fuck [sic] what a	
20		joke!" (MP 00347); [Mowat to Papayans,	
21		Sang Lee, and others] "Yep. He's here"	
22		(MP 00347); [Papayans to Sang Lee,	
23		Mowat and others] "Michelle get to the	
24		bay and rouste those kooks" (MP 00347);	
25		[7571 to Papayans, Sang Lee, Mowat and	
26		others] "Lol ok I'm on my way! [sic]"	
27		(MP 00347); [Papayans to Mowat, Sang	
28			

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1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:
2		Additional Material Pacts.
3		Lee, and others] "Get him charlie, just go
4		shake his hand, tell him we missed him
5		and can't believe he didn't make any of
6		these latest headlines, he should be
7		ashamed" (MP 00346-MP 00347);
8		[Mowat to Papayans, Sang Lee, and
9		others] "He's in the water. Only five guys
10		out. Get down here boys. I'm out there"
11		(MP 00346); [1505 to Papayans, Mowat,
12		Sang Lee, and others] "Fuck give me [sic]
13		hell" (MP 00344)); see also Ex. 13 (text
14		exchange between Papayans and co-
15		conspirator Brandon Lamers, 1/29/16:
16		[Lamers to Papayans] "Chris Taloa is
17		comming [sic] tomorrow let Benner know
18		and whoever" (MP 00360); [Papayans to
19		Lamers] "How did you find this out???"
20		(MP 00360); [Lamers to Papayans] "I'm
21		at a video little party [sic] at van dyne
22		everyone is saying that" (MP 00360);
23		[Papayans to Lamers] "Oh shizzle [sic],
24		he say it on his site" (MP 00360); [Lamers
25		to Papayans] "Everyone's talking about it
26		we have to sit on this guy" (MP 00359);
27		[Lamers to Papayans] "Don't understand
28		

1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:
2		raditional Matter and Laters.
3		man once again ruin a good day with that
4		crap" (MP 00359); [Papayans to Lamers]
5		"We will all be holding it down" (MP
6		00357); [Papayans to Lamers] "Kooks up
7		there" (MP 00346); [Lamers to Papayans]
8		"Huh"; "Allready [sic] up there" (MP
9		00346); [Papayans to Lamers] "Yup" (MP
10		00346); [Lamers to Papayans] "Fuck";
11		"Anyone there allready"; "Gosh damn";
12		"Are they in the water?"; "I hate this guy"
13		(MP 00345-MP00346); [Papayans to
14		Lamers] "Yea, only 5 guys out and he's
15		out, I'm going" (MP 00345); [Lamers to
16		Papayans] "Yeah get down there I'll be up
17		as soon as I can my dad should be going
18		out soon" (MP 00345); [Mowat to
19		Papayans, Blakeman and Thiel] "Surf
20		looks like it could get epic today. There's
21		five kooks standing on top of the trial with
22		their own personal photographer taking
23		pictures of them posing. I think it's the
24		same Taloa crew. This could get ugly
25		today. We all need to surf" (MP 00221);
26		[Mowat to Papayans, Blakeman and
27		Thiel] "It's definitely Taloa" (MP 00221);
28		15 C N 21( 02120 GIO (DAO )

1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:
2		Additional Material Pacts.
3		[Papayans to Mowat, Blakeman and
4		Thiel] "Yea it's him, no waves though"
5		(MP 00221); id. [Mowat to Papayans,
6		Blakeman and Thiel] "Too bad this bitch
7		that called the cops on [David Melo] is
8		such a cunt. She sure has a great rack and
9		ass!" (MP 00219); [Thiel to Mowat,
10		Papayans and Blakeman] "Fuckshe's
11		still down there???!" (MP 00219);
12		[Mowat to Thiel, Papayans and
13		Blakeman] "No, they are all gone. Ghost
14		town Lunada. Just had an epic sess [sic]
15		with just Sandoval out" (MP 00219);
16		[Thiel to Mowat, Papayans and
17		Blakeman] "Saw u [sic] get a couple good
18		ones! Good crew down now – Leo, Clyde,
19		Gabron, Chad" (MP 00219); [Mowat to
20		Thiel, Papayans and Blakeman] "Yep,
21		business as usual. The patio is in good
22		form" (MP 00219); [Thiel to Mowat,
23		Papayans and Blakeman] "Right on"
24		(MP 00219); <b>Ex. 20</b> (Angelo Ferrara
25		extraction report, 1/29/16 text from Sang
26		Lee to Angelo Ferrara: "Taloa n his
27		buddies r coming up to the bay today n
28		

1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:
2		Additional Waterial Facts.
3		tomorrow to surf Plz everyone take a
4		day off n surf We need many locals
5		out there today as possible God bless
6		Lunada n all her children (us) [sic]" (at p.
7		878); Ex. 21 (Def. Lee T-Mobile records,
8		indicating on 1/29/16, Sang Lee called
9		Charlie Mowat at 6:56 am PST (14:56
10		UTC) (p. 0271) and 8:02 am PST (16:02
11		UTC) (p. 0272), and called Defendant
12		Blakeman (at home) 62 times from 1:30
13		pm PST (21:30 UTC) (p. 0273) to 2:03
14		pm PST (22:03 UTC) (p. 0275).
15	97. The City has long been aware of	97. Decl. Franklin, Ex. 4
16	the Bay Boys' obstruction of the	(Memorandum to Mayor and City Council
17	public's free access to Lunada Bay.	from Jeff Kepley Re: Localism in Lunada
18		Bay, dated May 21, 2015: "Although our
19		Police Department does not receive
20		surfing related complaints frequently, we
21		do occasionally receive a call or complaint
22		regarding harassment, intimidation, or
23		vehicle tampering." (CITY022991)); Ex.
24		5 (12/31/15 Email from Chief Kepley to
25		"PDALL" and City Manager Dahlerbruch:
26		"You can see that some of these folks
27		have heard other chiefs take a stand
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1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:
2		Additional Material Pacts.
3		against the surfer bullying without
4		success. We need to really make a
5		difference and set the tone for a new day
6		in Lunada Bay." CITY023007); Ex. 6
7		(8/1/16 Emails with Chief Kepley, City
8		Manager Dahlerbruch, and Wolcott
9		Company (PR firm): Wolcott discusses
10		the PVE PD's goals to provide positive
11		updates to the community and secure
12		broader public support; says they don't
13		want their PR to look like they're trying to
14		"hide the blemishes" (CITY023081-2));
15		<b>Ex. 7</b> (6/19/14 Email to Sheri Repp
16		Loadsman from Joe Mendoza: "I have
17		received a complaint that the area where
18		this structure is located is off limits to
19		non-locals (surfers)."); <b>Ex. 10</b> (9/24/15
20		email from Chief Kepley to City Manager
21		Dahlerbruch, Captains Best and Velez,
22		and Sergeant Barber regarding "Update
23		on Surfing Localism": "While much more
24		work needs to be done, [Deputy District
25		Attorney Angie Christides of the LADA's
26		Office, Hardcore Gang Division] believes
27		that the future crimes related to surfer
28		

1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs'
2		Additional Material Facts:
3		localism can, and should, be prosecuted
4		with gang enhancements. This is
5		welcome news! I firmly believe that if we
6		prosecuted only one case in this fashion,
7		with publicity, it would be the first and
8		strongest effort to date to dissuade others
9		from committing similar offenses."
10		(emphasis added, CITY018158).

**Issue #5:** Bane Act

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14 | Plaintiffs' Additional Material Facts:

#### **Additional Material Facts:** The Bay Boys united—through 98. Decl. Franklin, Ex. 13 (text 98. common goals, symbols, and messages exchanged between Defendant practices—to deprive Plaintiffs of their Papayans and a co-conspirator, Brandon right to access the bluffs and shoreline Lamers, on 1/22/16: [Lamers to Papayans] through interference, intimidation, "Pathetic we had two kooks out two days threats and coercion. ago when I surfed and me and jack just sat right on his ass"; "He didn't catch a single wave" (MP 00416-MP 00415); [Papayans to Lamers] "That's the way to do it bro [sic] no reason to confront anybody does not [sic] let him get waves and they never come back" (MP 00415); [Lamers to

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Evidence in Support of Plaintiffs'

1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:	
2		raditional Material Lacts.	
3		Papayans] "Exactly that's how it has to be	
4		[sic] kooks come out then no fun waves	
5		[sic] so simple"; "They guy split so fast"	
6		(MP 00415); [Papayans to Lamers]	
7		"Haha, they are easy to spot too" (MP	
8		00415); [Lamers to Papayans] "Hell yeah	
9		just funny as shit" (MP 00414-MP	
10		00415).); [Lamers to Papayans] "Chris	
11		Taloa is comming [sic] tomorrow let	
12		Benner know and whoever" (MP 00360);	
13		[Papayans to Lamers] "How did you find	
14		this out???" (MP 00360); [Lamers to	
15		Papayans] "I'm at a video little party [sic]	
16		at van dyne everyone is saying that" (MP	
17		00360); [Papayans to Lamers] "Oh shizzle	
18		[sic], he say it on his site" (MP 00360);	
19		[Lamers to Papayans] "Everyone's talking	
20		about it we have to sit on this guy" (MP	
21		00359); [Mowat to Papayans, Blakeman	
22		and Thiel] "Too bad this bitch that called	
23		the cops on [David Melo] is such a cunt.	
24		She sure has a great rack and ass!" (MP	
25		00219); [Thiel to Mowat, Papayans and	
26		Blakeman] "Fuckshe's still down	
27		there???!" (MP 00219); [Mowat to Thiel,	
28		20 C N 216 00100 (D 0 )	

1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:
2		Auditional Material Lacts.
3		Papayans and Blakeman] "No, they are all
4		gone. Ghost town Lunada. Just had an
5		epic sess [sic] with just Sandoval out"
6		(MP 00219); [Thiel to Mowat, Papayans
7		and Blakeman] "Saw u [sic] get a couple
8		good ones! Good crew down now – Leo,
9		Clyde, Gabron, Chad" (MP 00219);
10		[Mowat to Thiel, Papayans and
11		Blakeman] "Yep, business as usual. The
12		patio is in good form" (MP 00219); [Thiel
13	to Mowat, Papayans and Blakeman]	
14	Right on" (MP 00219); <b>Ex. 20</b>	
15		(Angelo Ferrara extraction report, 1/29/16
16		text from Sang Lee to Angelo Ferrara:
17		"Taloa n his buddies r coming up to the
18		bay today n tomorrow to surf Plz
19		everyone take a day off n surf We
20		need many locals out there today as
21		possible God bless Lunada n all her
22		children (us) [sic]" (at p. 878), (text
23		message to Angelo Ferrara from Randy
24		Walton on 1/16/17: "By the way I heard
25		today is one of those 'surf the bay
26		days'!!!!! Boogie boarders and
27		everybody!!! There is a little bit is [sic]
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1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:
2		· · · · · · · · · · · · · · · · · · ·
3		Surf, there's some swell out there but
4		nothing spectacular but I hope it's packed
5		in those kooks are getting stuffed and
6		burned and that's about it no further than
7		that. You know what I mean!?!!!" (at p.
8		192); Decl. S. Wolff Supp. Pltfs.' Mot. for
9		Sanctions, Ex. 2 (Bay Boys group text
10		message after lawsuit filed, stating
11		"[t]here is hopefully no evidence that
12		those named barred the plaintiffs from
13		going surfing,"; see also Pltfs.' PAMF
14		No. 77, Dock. No. 329; see also Pltfs.'
15		PAMF No. 77, Dock. No. 329.
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Issue #6: **Assault** 

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Plaintiffs' Additional Material Facts:	Additional Material Facts:
99. Defendants Papayans and Sang	99. Decl. Franklin, Ex. 13 (text
Lee, along with co-conspirators Charlie	messages exchanged between Defendant
Mowat and others, planned the assault	Papayans, Sang Lee, and 9 others,
against Plaintiff Spencer on January 29,	including Charlie Mowat, on 1/29/16:
2016.	[2724 to Sang Lee, Papayans, and others]
	"The kook is here at the bay right now"
	(MP 00348); [Mowat to Sang Lee,

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1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:
2		Additional Waterial Facts.
3		Papayans, and others] "On my way!!!!"
4		(MP 00348); [Papayans to Sang Lee,
5		Mowat, and others] "I'm up"; "Tell him to
6		wait please" (MP 00348); [2724 to
7		Papayans, Sang Lee, Mowat and others]
8		"There are two kooks he's got a little
9		baldheaded white guy with them he looks
10		like a boogie board or to fuck [sic] what a
11		joke!" (MP 00347); [Mowat to Papayans,
12		Sang Lee, and others] "Yep. He's here"
13		(MP 00347); [Papayans to Sang Lee,
14		Mowat and others] "Michelle get to the
15		bay and rouste those kooks" (MP 00347);
16		[7571 to Papayans, Sang Lee, Mowat and
17		others] "Lol ok I'm on my way! [sic]"
18		(MP 00347); [Papayans to Mowat, Sang
19		Lee, and others] "Get him charlie, just go
20		shake his hand, tell him we missed him
21		and can't believe he didn't make any of
22		these latest headlines, he should be
23		ashamed" (MP 00346-MP 00347);
24		[Mowat to Papayans, Sang Lee, and
25		others] "He's in the water. Only five guys
26		out. Get down here boys. I'm out there"
27		(MP 00346); [1505 to Papayans, Mowat,
28		

1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:
2		Additional Material Facts.
3		Sang Lee, and others] "Fuck give me [sic]
4		hell" (MP 00344)); see also Ex. 13 (text
5		exchange between Papayans and co-
6		conspirator Brandon Lamers, 1/29/16:
7		[Lamers to Papayans] "Chris Taloa is
8		comming [sic] tomorrow let Benner know
9		and whoever" (MP 00360); [Papayans to
10		Lamers] "How did you find this out???"
11		(MP 00360); [Lamers to Papayans] "I'm
12		at a video little party [sic] at van dyne
13		everyone is saying that" (MP 00360);
14		[Papayans to Lamers] "Oh shizzle [sic],
15		he say it on his site" (MP 00360); [Lamers
16		to Papayans] "Everyone's talking about it
17		we have to sit on this guy" (MP 00359);
18		[Lamers to Papayans] "Don't understand
19		man once again ruin a good day with that
20		crap" (MP 00359); [Papayans to Lamers]
21		"We will all be holding it down" (MP
22		00357); [Papayans to Lamers] "Kooks up
23		there" (MP 00346); [Lamers to Papayans]
24		"Huh"; "Allready [sic] up there" (MP
25		00346); [Papayans to Lamers] "Yup" (MP
26		00346); [Lamers to Papayans] "Fuck";
27		"Anyone there allready"; "Gosh damn";
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1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:
2		Additional Material Facts:
3		"Are they in the water?"; "I hate this guy"
4		(MP 00345-MP00346); [Papayans to
5		Lamers] "Yea, only 5 guys out and he's
6		out, I'm going" (MP 00345); [Lamers to
7		Papayans] "Yeah get down there I'll be up
8		as soon as I can my dad should be going
9		out soon" (MP 00345).
10	100. Defendant Sang Lee also	100. Decl. Franklin, Ex. 21 (Def. Lee T-
11	communicated with co-Defendants	Mobile records, indicating on 1/29/16,
12	Brant Blakeman and Angelo Ferrara in	Sang Lee called Charlie Mowat at 6:56
13	advance of the January 29, 2016 assault	am PST (14:56 UTC) (p. 0271) and 8:02
14	on Plaintiff Spencer.	am PST (16:02 UTC) (p. 0272), and
15		called Defendant Blakeman (at home) 62
16		times from 1:30 pm PST (21:30 UTC) (p.
17		0273) to 2:03 pm PST (22:03 UTC) (p.
18		0275); Ex. 20 (Angelo Ferrara extraction
19		report, 1/29/16 text from Sang Lee to
20		Angelo Ferrara: "Taloa n his buddies r
21		coming up to the bay today n tomorrow to
22		surf Plz everyone take a day off n
23		surf We need many locals out there
24		today as possible God bless Lunada n
25		all her children (us) [sic]" (at p. 878).
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Issue #7: Battery

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# 101. Defendant Papayans, along with co-conspirator Charlie Mowat and co-Defendant Sang Lee, helped coordinate the actions against Plaintiff Spencer on January 29, 2016.

**Plaintiffs' Additional Material Facts:** 

# Evidence in Support of Plaintiffs' Additional Material Facts:

Decl. Franklin, Ex. 13 (text 101. messages exchanged between Defendant Papayans, Sang Lee, and 9 others, including Charlie Mowat, on 1/29/16: [2724 to Sang Lee, Papayans, and others] 'The kook is here at the bay right now" (MP 00348); [Mowat to Sang Lee, Papayans, and others] "On my way!!!!" (MP 00348); [Papayans to Sang Lee, Mowat, and others] "I'm up"; "Tell him to wait please" (MP 00348); [2724 to Papayans, Sang Lee, Mowat and others] "There are two kooks he's got a little baldheaded white guy with them he looks like a boogie board or to fuck [sic] what a joke!" (MP 00347); [Mowat to Papayans, Sang Lee, and others] "Yep. He's here" (MP 00347); [Papayans to Sang Lee, Mowat and others] "Michelle get to the bay and rouste those kooks" (MP 00347); [7571 to Papayans, Sang Lee, Mowat and others] "Lol ok I'm on my way! [sic]" (MP 00347); [Papayans to Mowat, Sang

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-26-

1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:
2		Auditional Material Facts:
3		Lee, and others] "Get him charlie, just go
4		shake his hand, tell him we missed him
5		and can't believe he didn't make any of
6		these latest headlines, he should be
7		ashamed" (MP 00346-MP 00347);
8		[Mowat to Papayans, Sang Lee, and
9		others] "He's in the water. Only five guys
10		out. Get down here boys. I'm out there"
11		(MP 00346); [1505 to Papayans, Mowat,
12		Sang Lee, and others] "Fuck give me [sic]
13		hell" (MP 00344)); see also Ex. 13 (text
14		exchange between Papayans and co-
15		conspirator Brandon Lamers, 1/29/16:
16		[Lamers to Papayans] "Chris Taloa is
17		comming [sic] tomorrow let Benner know
18		and whoever" (MP 00360); [Papayans to
19		Lamers] "How did you find this out???"
20		(MP 00360); [Lamers to Papayans] "I'm
21		at a video little party [sic] at van dyne
22		everyone is saying that" (MP 00360);
23		[Papayans to Lamers] "Oh shizzle [sic],
24		he say it on his site" (MP 00360); [Lamers
25		to Papayans] "Everyone's talking about it
26		we have to sit on this guy" (MP 00359);
27		[Lamers to Papayans] "Don't understand
28		

1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:
2		Additional Material Facts:
3		man once again ruin a good day with that
4		crap" (MP 00359); [Papayans to Lamers]
5		"We will all be holding it down" (MP
6		00357); [Papayans to Lamers] "Kooks up
7		there" (MP 00346); [Lamers to Papayans]
8		"Huh"; "Allready [sic] up there" (MP
9		00346); [Papayans to Lamers] "Yup" (MP
10		00346); [Lamers to Papayans] "Fuck";
11		"Anyone there allready"; "Gosh damn";
12		"Are they in the water?"; "I hate this guy"
13		(MP 00345-MP00346); [Papayans to
14		Lamers] "Yea, only 5 guys out and he's
15		out, I'm going" (MP 00345); [Lamers to
16		Papayans] "Yeah get down there I'll be up
17		as soon as I can my dad should be going
18		out soon" (MP 00345); Ex. 21 (Def. Lee
19		T-Mobile records, indicating on 1/29/16,
20		Sang Lee called Charlie Mowat at 6:56
21		am PST (14:56 UTC) (p. 0271) and 8:02
22		am PST (16:02 UTC) (p. 0272), and
23		called Defendant Blakeman (at home) 62
24		times from 1:30 pm PST (21:30 UTC) (p.
25		0273) to 2:03 pm PST (22:03 UTC) (p.
26		0275); <b>Ex. 20</b> (Angelo Ferrara extraction
27		report, 1/29/16 text from Sang Lee to
28		

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Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:
	Angelo Ferrara: "Taloa n his buddies r
	coming up to the bay today n tomorrow to
	surf Plz everyone take a day off n
	surf We need many locals out there
	today as possible God bless Lunada n
	all her children (us) [sic]" (at p. 878).

#### **Issue #8:** Spoliation and/or Suppression of Evidence

13	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:
14		Additional Material Facts.
15	102. In or around August 15, 2016,	102. Decl. Wolff ISO Pltfs.' Mot. for
16	Defendant Charlie Ferrara discarded his	Sanctions, Dock No. 470-16 (Ex. 15).
17	cell phone and obtained a new phone	
18	but failed to preserve any data	
19	(including texts and photos) from his	
20	prior cell phone.	
21	103. Defendant Charlie Ferrara	103. Decl. Wolff ISO Pltfs.' Mot. for
22	exchanged at least six text messages	Sanctions, Dock No. 470-18 (Ex. 17).
23	with co-Defendant Sang Lee but failed	
24	to preserve and produce these text	
25	messages.	
26	104. Defendant Sang Lee exchanged	104. Decl. Wolff ISO Pltfs.' Mot. for
27	at least 67 text messages with co-	Sanctions, Dock No. 470-1, ¶ 36 (pages
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1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:
2		Additional Material Facts:
3	Defendants Alan Johnston, Charlie	13-17).
4	Ferrara, Brant Blakeman, and Frank	
5	Ferrara but failed to preserve and	
6	produce any of these text messages.	
7	105. Defendant Sang Lee destroyed	105. Decl. Wolff ISO Pltfs.' Reply Re:
8	incriminating text messages.	Mot. for Sanctions, Dock. No. 477-1 at ¶
9		3 & Ex. 2.
10	106. Defendant Frank Ferrara	106. Decl. Wolff ISO Pltfs.' Mot. for
11	destroyed and failed to produce at least	Sanctions, Dock. No. 477-1, at ¶ 36
12	nine text messages that he exchanged	(pages 13-17).
13	with co-Defendant Sang Lee.	
14	107. Defendant Frank Ferrara	107. Decl. Wolff ISO Pltfs.' Mot. for
15	obtained a new cell phone in or around	Sanctions, Dock. No. 477-1, at ¶ 28 &
16	November 2016. He failed to preserve	Exs. 16 & 17.
17	any communications on his cell phone	
18	that occurred on or around the relevant	
19	timeframe in this action, from January	
20	to March 2016.	
21	108. Although Defendant Brant	108. Decl. Franklin, ¶ 22.
22	Blakeman received at least a half-dozen	
23	incriminating texts from co-Defendants	
24	and/or co-conspirators on February 5,	
25	2016, when Plaintiff Spencer was	
26	harassed, he failed to preserve and	
27	produce any of these text messages. He	
28		<u> </u>

1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:
2		Additional Material Facts:
3	similarly failed to preserve and produce	
4	four text messages that he exchanged	
5	with Sang Lee.	
6	109. The City of Palos Verdes Estates	109. Decl. Franklin, ¶¶ 20-22.
7	had possession, custody, and/or control	
8	over Defendant Blakeman's cell phone	
9	but similarly failed to preserve and	
10	produce any of the incriminating text	
11	messages that Defendant Blakeman	
12	received from co-Defendants and/or co-	
13	conspirators on February 5, 2017, when	
14	Plaintiff Spencer was harassed.	
15	110. Defendant Alan Johnston failed	110. Decl. Wolff ISO Pltfs.' Mot. for
16	to preserve and/or produce at least 45	Sanctions, Dock. No. 477-1, ¶ 36 at pp.
17	text messages that he exchanged with	13-17.
18	Defendant Sang Lee.	
19	111. Even to this date, there are	111. See Decl. Wolff ISO Pltfs.' Mot. for
20	numerous gaps in what Defendants	Sanctions, Dock No. 470-16 (Ex. 15)
21	produced. Most telling, there are huge	(Defendant Charlie Ferrara obtained a
22	gaps in Defendants' production of their	new cell phone in August 2016 and did
23	text messages, with some producing	not preserve any of his texts or
24	records with several months of text	photographs on his previous phone); Decl.
25	messages missing—or omitting	Wolff ISO Pltfs. Mot. for Sanctions,
26	messages that they obviously sent or	Dock. No. 477-1, ¶ 36 (Defendant Sang
27	received, as shown by records from	Lee's extraction report does not include at
28		21

1	Plaintiffs' Additional Material Facts:	Evidence in Support of Plaintiffs' Additional Material Facts:
2		Additional Material Facts:
3	other Defendants.	least 67 text messages that he exchanged
4		with co-Defendants; Defendant Frank
5		Ferrara deleted nine text messages
6		exchanged with co-Defendants, which are
7		now unrecoverable; Defendant Brant
8		Blakeman failed to produce four texts he
9		exchanged with Defendant Lee;
10		Defendant Johnston failed to produce 45
11		texts he exchanged with Defendant Lee);
12		Decl. Franklin, ¶ 22 (Defendant Brant
13		Blakeman failed to produce a string of
14		incriminating text messages received on
15		February 5, 2016 from co-Defendant
16		Papayans and co-conspirators).
17	112. Despite the existence of	112. Decl. Franklin, Ex. 24 (Papayans
18	numerous text communications which	Depo. at p. 66:21-25).
19	were exchanged with co-Defendants,	
20	Defendant Papayans testified under	
21	oath that he did not recall ever	
22	participating in any text messages	
23	talking about outsiders coming to	
24	Lunada Bay or anything like that.	
25	113. Despite the existence of	113. Decl. Franklin, Ex. 25 (Blakeman
26	numerous text communications which	Depo. at p. 241:5-9.
27	were received from co-Defendants,	
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1	Plaintiffs' Additional Material Facts: Evidence in Support of Plaintiffs' Additional Material Facts:
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3	Defendants Blakeman testified under
4	oath that he only used his cell phone to
5	receive texts from his wife, not others.
6	
7	DATED: October 18, 2017 HANSON BRIDGETT LLP
8	
9	
10	By: /s/ Kurt A. Franklin
11	KURT A. FRANKLIN LISA M. POOLEY
12	SAMANTHA D. WOLFF
13	RUSSELL C. PETERSEN CANDICE P. SHIH
14	Attorneys for Plaintiffs
15	CORY SPENCER, DIANA MILENA REED, and COASTAL PROTECTION
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